

Editor's note: appealed -- dismissed, Civ.No. 82-0167 (D.Wyo. Feb. 9, 1983)

DIANE M. BERNDT
RICHARD W. MYERS

IBLA 82-36

Decided March 16, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. W 72778.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

2. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCES: Diane M. Berndt and Richard W. Myers, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Diane M. Berndt and Richard W. Myers have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 14, 1981, rejecting their noncompetitive oil and gas lease application, W 72778, for failure to comply with 43 CFR 3102.2-7 (45 FR 35162 (May 23, 1980)), regarding other parties in interest. Appellants' oil and gas lease application for parcel W 3458 was drawn with first priority in the September 1980 simultaneous oil and gas lease drawing.

In the decision issued on September 14, 1981, BLM rejected Diane M. Berndt and Richard W. Meyers' application because a statement which sets

forth the nature of the agreement between them was not submitted in accordance with 43 CFR 3102.2-7. On the application, Diane M. Berndt, who signed the card, had listed Richard W. Myers as another party in interest.

In their statement of reasons for appeal, appellants assert that the statement required by 43 CFR 3102.2-7(b) was sent to BLM. When appellants submit applications for oil and gas leases, they regularly enclose a statement which sets forth the nature of their agreement, and a copy of that statement was provided with the statement of reasons. Appellants feel that since they regularly submit such a statement, a statement was provided in this instance, and their application should not be disqualified merely because the statement has not been located.

The regulation, 43 CFR 3102.2-7(b), requires the offeror to submit:

A statement, signed by both the offeror * * * and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement * * * [to] the proper Bureau of Land Management office not later than 15 days after the filing of the offer * * *. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title.

[1] It is well established that failure to comply with 43 CFR 3102.2-7(b) (formerly 3102.7 (1979)), requiring the submission of certain information regarding other parties in interest, must result in rejection of the lease offer. Lawrence E. Dye, 57 IBLA 360 (1981).

[2] There is a legal presumption of regularity which attends the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Kephart v. Richardson, 505 F.2d 1085, 1090 (3rd Cir. 1974); Lawrence E. Dye, *supra*. Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761, 763 (D.C. Cir. 1943); *see John Walter Starks*, 55 IBLA 266 (1981). An uncorroborated statement that information was included is insufficient to overcome the presumption that BLM would have taken proper notice of the document in issue, had it been received. Metro Energy, Inc., 52 IBLA 369 (1981). Consequently BLM properly rejected their application.

In John Walter Starks, *supra*, the Board noted that BLM follows procedures amounting to "regular business practice" to insure that submitted materials are not mishandled.

In David F. Owen, 31 IBLA 24, 29 (1977), this Board stated:

We are well aware that Government offices, through human agency, make mistakes. We are equally aware, through the thousands of appeals handled by this office, that people who deal

with the Government also make mistakes. But in cases such as this, the presumption of regularity favors the Government officer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

